

REMARKS

Claim 3 is amended herein. Support for the amendment is found, for example, at page 5, lines 6-19 and in the working examples. No new matter is presented.

Claims 1-6, 8 and 9 are all the claims pending in the application.

I. Request to Withdraw Finality of the Office Action dated March 18, 2008

Applicants respectfully submit that the Final Office Action dated March 18, 2008, has been made final improperly and thus respectfully solicit withdrawal of the finality of the Office Action.

Specifically, the Examiner sets forth at least one new ground of rejection which was not necessitated by Applicants' amendments. Namely, claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner states that it is not clear how the "monomer mixtures" of (d) and (e) are obtained if the amounts of (d-1) and (e-1), respectively, are 100% because only one compound could be present.

This §112, 2nd paragraph, rejection is a new ground of rejection not previously raised and it is improper to make an Action final where a new ground of rejection is set forth that is not necessitated by Applicants' amendment. In the last Amendment filed December 19, 2007 claim 3 was not amended and therefore the new ground of rejection raised in the subsequent Final Office Action dated March 18, 2008 was not necessitated by Applicants' amendment. Further, Applicants note that the language in claim 3 to which the Examiner now objects, i.e., "monomer mixture (d) containing (d-1) to (d-4)" and "monomer mixture (e) containing (e-1) to (e-5)" was present in original claim 3.

Despite this, the Examiner issued a Final Office Action, dated March 18, 2008, in which the Examiner propounded a new grounds for rejection against claim 3 for the first time. Yet, this new rejection is clearly directed to terms which existed in the claims as originally filed, as discussed above. Thus, Applicants' amendments did not necessitate this new ground of rejection.

For the reasons discussed above, Applicants request that the finality of the Office Action be withdrawn.

II. Response to Claim Rejections under 35 U.S.C. § 112

Claim 3 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants respectfully submit that the present claim language is clear and readily understood by those of ordinary skill in the art. Notwithstanding the above, to facilitate and expedite prosecution of the present application, claim 3 is amended herein to recite that each of (d') and (e') is obtained from a monomer or a monomer mixture containing components (d-1) to (d-4) and (e-1) to (e-5), respectively.

Accordingly withdrawal of the § 112, 2nd paragraph rejection is respectfully requested.

III. Response to Claim Rejections under 35 U.S.C. § 102 and 103

Claims 1-6, and 8 and 9 are rejected under 35 U.S.C. § 102(b) as anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Meyer et al (U.S. Patent 5,584,346).

Applicants respectfully traverse the rejection and request reconsideration in view of the following.

Meyer et al is directed to a specific toughened blend consisting of aromatic polyester with a certain amount of an impact modifier, the latter of which is a blend of a specific core/shell impact modifier and a specific linear copolymer containing, among others, certain amounts of units derived from ethylene (see claim 1 and examples).

Claims 1 and 2 of the present invention are directed to a specific thermoplastic polyester resin composition comprising a viscosity modifier (B). Said viscosity modifier (B) is specified to be a polymer consisting of certain amounts of units (a), (b) and (c), none of which gives rise to a unit derived from ethylene in the final polymer. Thus, the viscosity modifier of the present invention is different from the linear copolymer in Meyer et al and the subject matter of the present claims is not anticipated by Meyer et al.

Additionally, Meyer et al does not teach or suggest the presently claimed invention. The objective problem addressed by the present invention was to provide a thermoplastic polyester resin with improved anti-draw down effect. Meyer et al does not contain a clear and unambiguous teaching of a solution to this objective problem and there is no apparent reason for one of ordinary skill in the art to modify the disclosure of Meyer et al with a reasonable expectation of success. Moreover, Comparative Examples 13 and 14 of the present invention demonstrate that the viscosity modifier containing an ethylene unit (ET) and the viscosity modifier containing an ethylene unit and a vinyl acetate unit (VA) lead to thermoplastic polyester resins with lower anti-draw down effect compared with the examples in which no units derived from ethylene are contained. Accordingly, the present invention provides unexpectedly superior results. Thus, the subject matter of the present claims is patentable over Meyer et al.

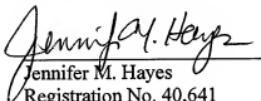
Accordingly, Applicants respectfully request withdrawal of the rejection based on Meyer et al.

IV. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Jennifer M. Hayes
Registration No. 40,641

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON OFFICE
23373
CUSTOMER NUMBER

Date: June 4, 2008